IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5308 of 2006
to
FIRST APPEAL No. 5313 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
HEIRS OF DAUD DHUSABBHAI & 1 - Respondent(s)

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Appearance :
MR KRUNAL D PANDYA, AGP for Appellant
MR AJ PATEL for Respondent(s)-Claimant(s)
None for Respondent(s) : 2

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 27/12/2006

ORAL JUDGMENT

(Per : HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. Admitted. Mr.A.J.Patel, learned advocate, waives service of notice on behalf of the claimant/ claimants in each Appeal Mr.Krunal D.Pandya, learned Assistant Government Pleader, states at the Bar that the interest of the appellant and that of the respondent No.2, i.e. the Executive Engineer, Narmada Yojna, Division-2/5, Limdi, is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of these Appeals upon the respondent No.2. Having regard to the facts of the case, the Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant, i.e. the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad, has challenged the legality of common judgment and award dated November 14, 2003, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAQ), Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.2307/1996 to 2312/1996 by which the claimants are awarded additional compensation at the rate of Rs.26.80 ps. per sq.mt. over and above the compensation awarded to them at the rate of Rs.1.20 ps. per sq.mt. for irrigated and lands and Rs.0.80 ps. per sq.mt. for non-irrigated lands by the Special Land Acquisition Officer vide his award dated June 28, 1995.

3. The State Government received a proposal from the Executive Engineer, Narmada Yojana,

Division No.2/5, Limdi, to acquire the lands of village Ranpari, Taluka: Dhandhuka, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On consideration of the said proposal, the State Government was satisfied that the agricultural lands of village Ranpari were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on February 22, 1993. The land owners were thereafter served with notices under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Ranpari specified in the notification published under Section 4(1) of the Act were needed for the

public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on January 17, 1994. The interested persons were thereafter served with notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated June 28, 1995, offered compensation to the claimants at the rate of Rs.1.20 ps per sq.mt. for irrigated lands and Rs.0.80 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they required the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of

just amount of compensation payable to them. Accordingly References were made to the District Court (R), Ahmedabad, which were registered as Land Acquisition Case Nos.2307/1996 to 2312/1996.

4. On behalf of the claimants, witness Samatbhai Bhikhabhai was examined at Ex.28. He mentioned before the Court that the lands acquired were highly fertile and that each claimant was able to raise different crops such as Cotton, Jiru, Bajri, Juvar, etc. during three different seasons in a year. The witness for the claimants asserted that each claimant was able to earn net income of Rs.20,000/- per year per Vigha from the sale of agricultural produces. He claimed before the Reference Court that the village was fully developed having facilities like water, Wells, Pucca road, cooperative societies, post office, primary school, health center, etc., and asserted that the claimants were entitled to additional compensation as

claimed by them. During the course of recording of his testimony, the witness produced the previous award of the Reference Court relating to the lands of village Ranpari rendered in Land Acquisition Reference Nos.2313/1996 to 2324/1996 at Ex.26. It was further mentioned by the witness that the previous award of the Reference Court relating to the lands of village Ranpari, which were similar in all respects to the lands acquired in the instant case, was challenged before the High Court in First Appeals No.1676/2001 to 1694/2001 with First Appeals No.1877/2001 to 1884/2001 and the High Court, by judgment dated May 4, 2001, had confirmed the judgment and award rendered by the Reference Court in Land Acquisition Case Nos.2313/1996 to 2324/1996. The witness also produced a copy of the judgment dated May 4, 2001, of the High Court at Ex.27.

Though this witness was cross-examined on behalf of the acquiring authorities, nothing could be elicited to doubt his assertion that the previous award of the Reference Court relating to the lands of this very village was not a relevant piece of evidence nor the assertion made by this witness that the lands acquired previously from this village were similar in all respects to the lands acquired in the instant case could be demonstrated to be untrue. It may be mentioned that no witness was examined either by the appellant or by the acquiring body before the Reference Court. However, on behalf of the appellant, the statement indicating the price of the lands sold in the last five years was produced at Ex.32 and Severance Register was produced at Ex.34.

5. On the basis of evidence led by the witness for the claimants and the previous award of the Reference Court relating to the lands of this very village, which was confirmed by the

High Court, the Reference Court in the instant case was of the view that the market value of the lands acquired in the instant case was Rs.28/- per sq.mt. Under the circumstances, the Reference Court has awarded additional compensation of Rs.26.80/- per sq.mt. by the impugned award giving rise to the abovenumbered Appeals.

6. This Court has heard Mr.Krunal D.Pandya, learned Assistant Government Pleader for the appellant and Mr.A.J.Patel, learned Advocate for the claimant/claimants, at length and in great detail. This Court has also considered the documents produced by the learned counsels for the parties for perusal of the Court.

7. Though the witness for the claimants could not make good his assertion that each claimant was earning net income of Rs.20,000/- per year per Vigha from the sale of agricultural produces, there is no manner of doubt that the lands acquired were highly

fertile and that different crops were being raised thereon. However, it is to be noticed that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was the previous award of the Reference Court relating to the lands of this very village, which was produced at Ex.26. A perusal of Ex.26 makes it very clear that the lands of village Ranpari were acquired for the public purpose of Narmada Project Limdi Branch Canal road pursuant to publication of Notification issued under Section 4(1) of the Act in the Official Gazette on October 12, 1992. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.1.20 ps. per sq.mt. for irrigated lands and Rs.0.80 ps. per sq.mt. for non-irrigated lands by his award dated August 28, 1995. Feeling aggrieved, the claimants had sought references. Accordingly References were made to the District Court,

Ahmedabad (R) where they were registered as Land Acquisition Case Nos.2313/1996 to 2324/1996. Therein, on behalf of the claimants, (1) witness Valjibhai Ganeshbhai Patel was examined at Ex.27 and (2) witness Savjibhai Laljibhai Patel was examined at Ex.28. whereas on behalf of the acquiring authorities (1) witness Karansinh Mathurbhai, who was then Executive Engineer, Narmada Yojna, was examined at Ex.46 and (2) witness Pallaviben Ghanshyambhai, who was then serving as Land Acquisition Officer, Narmada Nigam, Unit-3, was examined at Ex.48. Over and above oral evidence, documentary evidence was also adduced on behalf of the parties. On appreciation of evidence, the Reference Court in the said case, by judgment and award dated December 28, 1999, awarded in all compensation to the claimants at the rate of Rs.28/- per sq.mt. It is well settled that the previous award of the Reference Court relating to the lands of a village and which has attained finality can be treated as a

good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the same village. Under the circumstances, the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court, which was confirmed by the High Court, relating to the same village for the purpose of determining the market value of the lands acquired in the instant case.

8. The learned Assistant Government Pleader could not point out to the Court that the calculation made by the Reference Court in the instant case regarding the rate of compensation payable to the claimants was erroneous in any manner. On re-appreciation of facts of the case, this Court finds that correct findings of facts have been arrived at to which settled principles of law have been applied by the Reference Court. The learned Assistant Government Pleader has failed to persuade this Court to take a

different view than the one which is taken by the Reference Court in the instant case. The result of the above discussion is that there is no merit in any of the Appeals filed by the appellant and therefore, the Appeals are liable to be dismissed.

9. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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